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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16  
17 SIERRA CLUB, WILDEARTH )  
GUARDIANS, and ROCKY MOUNTAIN )  
18 CLEAN AIR ACTION, )

19 Plaintiffs, )

20 v. )

21 U.S. DEPARTMENT OF THE INTERIOR )  
and DIRK KEMPTHORNE, )  
22 )

23 Defendants )

No. C-08-0850 VRW

ANSWER TO THE COMPLAINT

Hon. Vaughn R. Walker

1 Defendants United States Department of the Interior and Dirk Kempthorne submit this  
2 Answer to Plaintiffs' Complaint. The numbered paragraphs in Defendants' Answer correspond  
3 to the numbered paragraphs in the Plaintiffs' Complaint.

#### 4 INTRODUCTION

5 1. The first sentence of Paragraph 1 of the Complaint characterizes the nature of  
6 plaintiffs' claims and requires no response. The second and third sentences of Paragraph 1  
7 consist of legal conclusions and require no response.

8 2. Paragraph 2 of the Complaint characterizes the nature of plaintiffs' claims and  
9 requires no response; to the extent that a response is required, the Defendants deny the allega-  
10 tions of Paragraph 2.

11 3. Defendants deny the allegations of Paragraph 3 of the Complaint.

#### 12 JURISDICTION

13 4. Paragraph 4 of the Complaint characterizes the nature of Plaintiffs' claims and  
14 otherwise consists of legal conclusions to which no response is necessary; to the extent that a  
15 response is required, the Defendants admit that this Court would otherwise have jurisdiction over  
16 this action pursuant to 28 U.S.C. § 1331, but denies that this action comes within the Court's  
17 jurisdiction under Article III of the U.S. Constitution. The Defendants deny that the Administra-  
18 tive Procedure Act ("APA"), 5 U.S.C. §§ 701–706, creates subject matter jurisdiction and further  
19 deny that Plaintiffs are entitled to relief under 5 U.S.C. §§ 701–706, or 28 U.S.C. §§ 2201–2202.

20 5. Paragraph 5 of the Complaint consists of legal conclusions to which no response  
21 is necessary; to the extent that a response is required, the Defendants deny the allegations of  
22 Paragraph 5.

#### 23 VENUE

24 6. Paragraph 6 of the Complaint consists of legal conclusions to which no response  
25 is necessary; to the extent that a response is required, the Defendants lack information sufficient  
26 for them to either admit or deny the allegations of Paragraph 6. Defendants deny that 28 U.S.C.  
27 § 1361 provides for venue in this or any other district.

PARTIES

7. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 7 of the Complaint.

8. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 8 of the Complaint.

9. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 9 of the Complaint.

10. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 10 of the Complaint.

11. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 11 of the Complaint.

12. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 12 of the Complaint.

13. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 13 of the Complaint.

14. Defendants lack information sufficient for them to either admit or deny the allegations of Paragraph 14 of the Complaint.

15. Defendants deny the allegations of Paragraph 15 of the Complaint.

16. Defendants lack information sufficient for them to either admit or deny the allegations of the first two sentences of Paragraph 16 of the Complaint. Defendants deny the allegations of the third and fourth sentences of Paragraph 16.

17. Defendants admit the allegations of the first sentence of Paragraph 17 of the Complaint. The second and third sentences of Paragraph 17 state legal conclusions to which no response is required.

18. Defendants admit that Dirk Kempthorne is currently the Secretary of the Interior. The remainder of the first sentence of Paragraph 18 of the Complaint states a legal conclusion to which no response is required. The second sentence of Paragraph 18 states a legal conclusion to

1 which no response is required; to the extent that a further response is required, Defendants deny  
2 that they have caused any harm alleged.

3 LEGAL AND FACTUAL BACKGROUND

4 19. Defendants admit the allegations of the first two sentences of Paragraph 19 of the  
5 Complaint, except that Defendants lack information sufficient for them to admit or deny the  
6 allegation that water “completely” permeates coal beds in all cases. Defendants admit the  
7 allegations of the third sentence of Paragraph 19, except that Defendants deny that water must be  
8 completely pumped from a coal seam before methane may be extracted.

9 20. Defendants admit the first three sentences of Paragraph 20 of the Complaint,  
10 except that Defendants lack information sufficient for them to admit or deny that the technique  
11 described is employed as described in all cases. Defendants at the present time lack information  
12 sufficient for them to either admit or deny the allegations of the fourth sentence of Paragraph 20.

13 21. Defendants deny the allegations of the first sentence of Paragraph 21 of the  
14 Complaint, but aver that the extraction of coal bed methane may in some cases have impacts on  
15 the environment. Defendants admit that produced water may contain dissolved solids or  
16 hydraulic fluid, or both, but at the present time Defendants lack information sufficient for them  
17 to either admit or deny the remaining allegations of the second sentence of Paragraph 21. Defen-  
18 dants admit that, in some cases, produced water may be discharged to surface water and lands,  
19 which may have impacts on the environment and wildlife, but at the present time Defendants  
20 lack information sufficient for them to either admit or deny the remaining allegations of the third  
21 sentence of Paragraph 21. As to the fourth sentence of Paragraph 21, Defendants admit that  
22 many coal formations may hold large quantities of ground water and that ground water contained  
23 in coal formations may occasionally be used for irrigation purposes, but deny that ground water  
24 contained in coal formations is an important source of drinking water. Defendants admit that  
25 produced water that is not reinjected into the coal bed formation may reduce ground water, but  
26 otherwise lack information sufficient for them to either admit or deny the allegations of the fifth  
27 sentence of Paragraph 21.

1 || 22. Defendants admit the allegations of Paragraph 22 of the Complaint.

2           23. Paragraph 23 of the Complaint consists of legal conclusions and statutory  
3 quotations to which no response is required; to the extent that a further response is required,  
4 Defendants admit that the quotation from the statutory provisions cited appears to be accurate.

24. Defendants admit that Cong. Waxman wrote the letter referred to in Paragraph 24 of the Complaint; the remaining allegations of Paragraph 24 characterize that document, which speaks for itself.

25. Paragraph 25 of the Complaint consists of quotations from congressional correspondence to which no response is required; to the extent that a further response is required, Defendants admit that the letter cited contains in substance the language quoted.

11           26.       Paragraph 26 of the Complaint consists of quotations from congressional corres-  
12       pondence to which no response is required; to the extent that a further response is required,  
13       Defendants admit that the letter cited contains in substance the language quoted.

14 ANSWER TO CLAIMS FOR RELIEF

27. Defendants incorporate by reference their answers to the allegations of  
Paragraphs 1 through 26 of the Complaint as incorporated by reference in Paragraph 27.

17           28.     Paragraph 28 of the Complaint consists of legal conclusions to which no response  
18     is required.

19                    29.       Paragraph 29 of the Complaint consists of legal conclusions to which no response  
20       is required.

21           30. Paragraph 30 of the Complaint consists of legal conclusions to which no response  
22 is required.

23           31. Paragraph 31 of the Complaint consists of legal conclusions to which no response  
24 is required.

25           32. Defendants admit the first sentence of Paragraph 32 of the Complaint. Defen-  
26       dants deny the allegations of second sentence of Paragraph 32 and aver that Defendants have  
27       entered into an agreement with the National Academy of Sciences to commence work on the

1 coal bed methane analysis. Defendants admit the third sentence of Paragraph 32.

2 33. Paragraph 33 of the Complaint consists of legal conclusions to which no response  
3 is required; to the extent Paragraph 33 contains factual allegations, those allegations are denied.

4 ANSWER TO PRAYER FOR RELIEF

5 The remaining paragraphs of the Complaint contain plaintiffs' request for relief and do  
6 not require a response; to the extent that a response is required, Defendants deny that plaintiffs  
7 are entitled to any relief.

8 AFFIRMATIVE DEFENSES

9 **First Affirmative Defense**

10 The Complaint fails to set forth a live case or controversy and, accordingly, this Court  
11 lacks subject matter jurisdiction over plaintiffs' claims.

12 **Second Affirmative Defense**

13 The Complaint fails to state a claim under the Energy Policy Act of 2005, Pub. L. No.  
14 109-58, § 1811, 119 Stat. 594, 1126–27 (2005).

15 **Third Affirmative Defense**

16 The Court lacks subject matter jurisdiction to order the relief sought by plaintiffs.

17 **Fourth Affirmative Defense**

18 Plaintiffs lack standing to pursue their claims.

19 **Fifth Affirmative Defense**

20 Defendants deny any allegations of the Complaint, whether express or implied, that are  
21 not expressly admitted, denied, or qualified herein.

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1 WHEREFORE, Defendants request that the Court dismiss plaintiffs' complaint or enter  
2 judgment in favor of the Defendants, deny in all respects Plaintiffs' prayer for relief, and grant  
3 such other relief as may be appropriate.  
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5 Dated: April 11, 2008

Respectfully submitted,

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